

**Request for Innocent Spouse Relief**

OMB No. 1545-1596

► See instructions.

Name of person requesting innocent spouse relief	Social security number (SSN) .....
Your current home address (number and street). If a P.O. box, see instructions.	Apt. no. .....
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions.	

**Part I** Information About the Joint Tax Return for Which You Are Requesting Innocent Spouse Relief

- 1 Enter the tax year for which you are requesting innocent spouse relief ► \_\_\_\_\_
- 2 Enter the names and SSNs for you and your spouse from the joint tax return for the year entered on line 1.

First name, initial, and last name shown first on the joint return	SSN shown first .....
First name, initial, and last name shown second on the joint return	SSN shown second .....

**Tip:** The IRS can help you complete Form 8857. If you are in contact with an IRS employee, you can ask that employee. Or you can call 1-800-829-1040.

**Caution:** By law, if the amount of additional tax due to the grossly erroneous item(s) of your spouse is **\$500 or less**, you will not qualify for innocent spouse relief. The IRS will calculate the amount of additional tax and tell you if you qualify for innocent spouse relief.

3	Brief description of grossly erroneous item (see instructions)	Amount
a	_____	_____
b	_____	_____
c	_____	_____

If you have more than 3 items, attach a statement listing the additional items and amounts.

4	If line 3 includes entries for a deduction, credit, or property basis claimed on the joint return, enter <b>your</b> adjusted gross income from the <b>most recent tax year</b> (see instructions) . . . . .	4	_____
---	--	---	-------

**ALL  
FILERS**

**NEXT:** See instructions and prepare a **statement** to attach to Form 8857. Explain **why you believe you qualify** for innocent spouse relief. Include the following in the statement:

- A detailed description of each grossly erroneous item.
- Why you did not know, and had no reason to know, that there was an understatement of tax on the joint return due to the grossly erroneous item(s) of your spouse.
- Why it would be **unfair** to hold you responsible for the understated tax.

**THEN:** File Form 8857 as indicated in the instructions. The IRS will review your request and tell you if you qualify for innocent spouse relief.

**Part II** Signature(s)

Under penalties of perjury, I declare that I have examined this form and any accompanying schedules and statements and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Keep a copy of this form for your records.	Signature of person requesting innocent spouse relief	Date	Daytime phone number (optional)
	Preparer's signature	Date	Preparer's SSN .....
<b>Paid Preparer's Use Only</b>	Firm's name (or yours if self-employed) and address	Check if self-employed <input type="checkbox"/>	EIN .....
			ZIP code

## Why Should I Use Form 8857?

You should use Form 8857 if you believe you should not be required to pay tax, interest, and penalties due for a tax year for which you filed a joint tax return. These instructions will help you determine if you should use Form 8857.

Generally, when you file a joint tax return, both you and your spouse are responsible for all the tax and any interest and penalties for that tax year. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. However, the return may not have shown the correct tax because, for example, of income your spouse received but did not report. If you believe you should not be responsible for the additional tax, interest, and penalties, you can ask the IRS to relieve you of that responsibility. That "relief" is called **innocent spouse relief**.

**Note:** *If you are unsure but think you may qualify, file Form 8857. The IRS will review the form and attachments, calculate tax, and let you know if you qualify.*

If you want more details on how to calculate the tax and determine if you qualify, see **Pub. 971**, Innocent Spouse Relief.

## Do I Qualify for Innocent Spouse Relief?

You must meet **all three** of the following conditions to qualify for innocent spouse relief.

**Condition 1.** You filed a joint return that had **grossly erroneous items** (defined later) that resulted in a **substantial understatement of tax** (defined later) shown on the return.

**Condition 2.** You establish that when you signed the joint return you did not know, and had no reason to know, that there was a substantial understatement of tax.

**Condition 3.** Considering all the facts and circumstances, it would be **unfair** to hold you responsible for the understatement of tax and related penalties and interest.

One factor in determining that it is **unfair** to hold you responsible is the absence of any significant direct or indirect benefit to you from the understatement of tax. Your receipt of property from your spouse may be a significant benefit, even if it is received several years later. Normal support received from your spouse is not a significant benefit. Another factor may be whether you were later divorced or deserted by your spouse.

**Example.** You filed a joint return with your spouse for 1995, but you were divorced later in 1996. The IRS is now billing you for \$2,000 in additional tax and penalties on your 1995 return. The additional tax resulted from \$6,000 of income from your spouse's business that was not reported on your joint tax return. You were not aware of this income and had no reason to know about it because of the way your spouse conducted the business. You also had no access to

the money because your spouse did not use the money until after the divorce. You believe it would be unfair to make you pay the tax because you did not benefit from the unreported income. You may qualify for innocent spouse relief and should request it on Form 8857.

## What Does NOT Qualify for Innocent Spouse Relief?

There are many situations in which you may owe tax related to your spouse, but not be eligible for innocent spouse relief. For example, you filed a joint return that properly reflects your income and deductions, but showed an unpaid balance due of \$10,000, which your spouse promised to pay. You got divorced shortly thereafter, and again your spouse promised to pay the unpaid amount, but failed to do so. You are not eligible for innocent spouse relief. The law does not provide relief for an unpaid balance due shown on a return.

## What Are Grossly Erroneous Items?

A grossly erroneous item is—

- **Unreported income.** Income received by your spouse that is not reported on the joint tax return, or
- **Incorrect deductions, credits, etc.** A deduction, credit, or property basis claimed on the joint return by your spouse for which there is no basis in fact or law.

For example, there is no basis in fact or law for a deduction if **any** of the three following conditions apply.

**Condition 1.** The expense for which the deduction is taken was never made. (For example, your spouse deducted \$10,000 of advertising expenses on Schedule C (Form 1040), but never paid for any advertising.)

**Condition 2.** The expense does not qualify as a deductible expense under well-settled legal principles. (For example, your spouse claimed a business fees deduction of \$10,000 that was for the payment of state fines; fines are not deductible.)

**Condition 3.** No substantial legal argument can be made to support the deductibility of the expense. (For example, your spouse claimed \$4,000 security costs related to a home office, which were actually veterinary and food costs for your family's two dogs.)

## What Is a Substantial Understatement of Tax?

If the amount of tax due to grossly erroneous items is **more than \$500**, it is considered substantial. However, tax due to incorrect deductions, credits, etc., must meet a special test (see page 3) to be treated as a substantial understatement of tax. Tax due to unreported income does not have to meet the special test.

## What Special Test Applies to Tax Due to Incorrect Deductions, Credits, etc.?

To qualify for innocent spouse relief, the tax due to **incorrect deductions, credits, etc. plus** any related penalties and interest must be more than a certain amount. That amount is explained in the table below. Definitions of your adjusted gross income (AGI) and most recent tax year follow the table. If you want, you can see Pub. 971 for more details on how to determine if you meet the test. However, the IRS will review Form 8857 and determine if you meet the test.

IF your AGI for the most recent tax year was . . .	THEN the understatement of tax due to incorrect deductions, credits, etc. PLUS related penalties and interest must be more than . . .
\$20,000 or less	10% of <b>your AGI</b>
More than \$20,000	25% of <b>your AGI</b>

## What Is My Most Recent Tax Year?

Your **most recent tax year** is the last tax year ending before the date the IRS mailed you a notice of deficiency. If the IRS did not mail you a notice of deficiency, it is the last tax year ending before you request relief.

## What Is My AGI?

Generally, **your AGI** is the amount of your income, minus certain adjustments to income, for your most recent tax year. (For example, AGI is shown on line 32 of the 1997 Form 1040.) Both of the following rules apply when you figure your AGI:

- **Do not** include the AGI of the spouse with whom you filed the joint return for the year you are requesting innocent spouse relief.
- If you were married to a different spouse at the end of your most recent tax year, include your new spouse's AGI from that year. You must include it even if you did not file a joint return with your new spouse.

## What About Community Property Laws?

For purposes of innocent spouse relief, community property rules **do not** apply when determining to which spouse gross income (other than gross income from property) belongs.

## When Should I File Form 8857?

File Form 8857 as soon as you realize you are liable for tax due to grossly erroneous items of your spouse. The following are some of the ways you may realize you have a liability.

- An IRS examination.
- An IRS notice.

- You and your spouse file an amended return that shows additional tax due. **Attach a copy of your amended return (Form 1040X) to Form 8857.** Write "COPY" on the Form 1040X you attach to Form 8857. File Form 8857 separately from Form 1040X.
- You become aware of unreported income.

## Where Do I File Form 8857?

Where you file Form 8857 depends on your situation. Read the table below to find out where you should file.

IF . . .	THEN file Form 8857 with . . .
You are meeting with an IRS employee for an examination, examination appeal, or collection.	That IRS employee.
You received an IRS notice showing unreported income or an overstated deduction.	Internal Revenue Service Center Cincinnati, OH 45999-0857 Attach a copy of the notice to Form 8857.
You received an IRS statutory notice of deficiency.	The IRS employee named in the notice of deficiency, before the end of the 90-day period specified in the notice.* Attach a copy of the notice to Form 8857.
None of the situations above apply to you.	Internal Revenue Service Center Cincinnati, OH 45999-0857

\*Before the end of the 90-day period, file a petition with the Tax Court, as explained in the notice. When you do this, you will preserve your rights if the IRS is not able to properly consider your request for innocent spouse relief before the end of the 90-day period. Include the information that supports your position, and include the innocent spouse issue in your petition to the Tax Court. The time for filing with the Tax Court is **not** extended while the IRS is considering your request for innocent spouse relief.

## How Do I Fill In Form 8857?

**Tip:** *The IRS can help you complete Form 8857. If you are in contact with an IRS employee, you can ask that employee. Or you can call 1-800-829-1040.*

## Address

If you have a P.O. box, enter that number **only** if your post office does not deliver mail to your street address. If you have a foreign address, enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code. Please **do not** abbreviate the country name.

## Line 1—Tax Year

If you are requesting relief for more than one tax year, file a separate Form 8857 for each tax year.

### Line 3—Grossly Erroneous Item(s)

Briefly describe each item and enter the amount of unreported income or incorrect deduction, credit, or property basis. For example, if you are being billed by the IRS for \$2,000 in tax, interest, and penalties that resulted from your spouse not reporting \$6,000 of business income, you would enter "Unreported income—Spouse's business" and the \$6,000 amount on line 3a.

### Line 4—AGI From Most Recent Tax Year

See **What Is My AGI?** on page 3. If you have not yet filed your return for that year, you may estimate your AGI.

### What Should I Include in My Statement?

You **must** attach a statement to Form 8857 explaining why you **believe** you qualify for innocent spouse relief. Put your name, SSN, and "Form 8857" at the top of each page. The contents of the statement will vary depending on your situation, but should include the following:

- A detailed description of each grossly erroneous item.
- Why you did not know, and had no reason to know, that there was an understatement of tax resulting from the grossly erroneous item(s).
- Why it would be **unfair** to hold you responsible for the understated tax (see page 2).

Attach copies of any original documents (such as bank statements, a divorce decree, etc.) that you are using to support your request. Put your name, SSN, and "Form 8857" on each page. Keep the originals for your records.

### Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to determine the amount of liability, if any, of which you may be relieved. Internal Revenue Code section 6013(e) allows innocent spouse relief. If you request innocent spouse relief, you must give us the information requested on this form. Code section 6109 requires you to provide your social security number. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia for use in administering their tax laws. If you do not provide all the information in a timely manner, we may not be able to process your request.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Learning about the law or the form**, 13 min.; **Preparing the form**, 16 min.; and **Copying, assembling, and sending the form to the IRS**, 14 min.

If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the form to this address. Instead, see **Where Do I File Form 8857?** on page 3.

